



# County of Los Angeles CHIEF EXECUTIVE OFFICE

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SACHI A. HAMAI  
Interim Chief Executive Officer

September 4, 2015

To: Mayor Michael D. Antonovich  
Supervisor Hilda L. Solis  
Supervisor Mark Ridley-Thomas  
Supervisor Sheila Keuhl  
Supervisor Don Knabe

From: Sachi A. Hamai  
Interim Chief Executive Officer

Board of Supervisors  
HILDA L. SOLIS  
First District

MARK RIDLEY-THOMAS  
Second District

SHEILA KUEHL  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

## **REPORT BACK – USE OF CAMERA-EQUIPPED DRONES IN LOS ANGELES COUNTY (ITEM NO. 55-A, AGENDA OF JULY 21, 2015)**

On July 21, 2015, the Board directed the Interim Chief Executive Officer (CEO) to report on the impacts of drones/Unmanned Aircraft Systems (drone/UAS) to public safety. To thoroughly respond to this motion, the CEO collaborated with the Fire Department (Fire), the Sheriff Department (Sheriff), and County Counsel to provide the written report to address the following:

1. Further examination and information on the Federal Aviation Administration (FAA) guidelines regarding drones.
2. The effectiveness of FAA regulations.
3. Whether Fire or Sheriff have adequate training to enforce regulations pertaining to drones/UAS or whether special training is necessary.
4. Whether Fire or Sheriff have received any complaints regarding drones.
5. Whether the County has the authority to restrict drones.
6. Whether a County ordinance should be enacted to address any deficiencies in current law.

### BACKGROUND

Due to the affordability and technological advancements of commercial drones, the number of incidents involving drones obstructing firefighting or the delivery of law enforcement services has been on the rise. These occurrences have raised concerns about public safety and the danger to the safety of aircraft, pilots and citizens on the ground. At this time, there is no specific law in the state of California that covers the misuse of a drone/UAS. However, there are two pending bills that are being considered

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in the California State Senate, Senate Bill 142 (SB 142) and Senate Bill 167 (SB 167), that represents the State's attempts to address the public safety of Californians.

The following addresses the concerns highlighted by the July 21, 2015 motion from the Board:

**1. FAA guidelines regarding the use of drones including, but not limited to, distance from airports, altitude restrictions, privacy laws, and obstruction of public safety:**

FAA rules and regulations are enacted to maintain safety in the operation of aircraft in the national airspace. A drone/UAS is considered an aircraft by FAA definition. Violations of the FAA rules and regulations are generally administrative and may result in civil penalties such as fines, suspension of a pilot's license, or certificates of operation.

The FAA's safety mandate, under 49 U.S.C. (United States Code) § 40103, requires it to regulate aircraft operations conducted to protect persons and property on the ground, and to prevent collisions between aircraft and other aircraft or objects. In addition, 49 U.S.C. § 44701(a) requires the agency to promote safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for other practices, methods, and procedures the FAA finds necessary for safety in air commerce and national security.

Drones/UAS are aircraft as defined in the FAA's authorizing statutes and are subject to regulation by the FAA. 49 U.S.C. § 402(a) (6) defines an "aircraft" as "any contrivance invented, used or designed to navigate or fly in the air." FAA regulations define an "aircraft" as "a device that is used or intended to be used for flight in the air" (14 C.F.R § 1.1).

The FAA has traditionally viewed operation of drones/UAS (model aircraft) as hobbies and for recreational purposes. The technological advances in drones/UAS have caused Congress to mandate that the FAA promulgate regulations and policy to facilitate the commercial, law enforcement, and safety related organizations use of UAS in the National Airspace System (NAS). The intent of Congress was made clear in the FAA Modernization and Reform Act of 2012, Public Law 112-95 (2012 Act).

Section (§)336(c) of the 2012 Act defines "Model Aircraft" as:

1. *Capable of sustained flight in the atmosphere;*

2. *Flown within visual line of sight of the person operating the aircraft; and*
3. *Flown for hobby and recreational purpose.*

The FAA is restricted by the 2013 Act from conducting further rulemaking specific to model aircraft, as defined in §336(c) of the 2012 Act, so long as the model aircraft operations are conducted in accordance with the requirements of §336(a).

§336(a) of the 2012 requires that:

1. *The aircraft is flown strictly for hobby or recreational use;*
2. *The aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;*
3. *The aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;*
4. *The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and at an altitude below 400 feet;*
5. *When flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation model aircraft operators flying from a permanent location within 5 miles of an airport should establish a mutually-agreed upon operating procedure with the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport).*

§336(b) of the 2012 Act makes clear that the FAA has the authority, under its existing regulations, to pursue legal enforcement action against persons operating model aircraft when the operations endanger the safety of the NAS, even if they are operating in accordance with §336(a) and §336(c). A model aircraft operation may be subject to an enforcement action for violation of 14 CFR §91.13 if the operation is conducted in a careless or reckless manner so as to endanger the life or property of another.

Currently, drones/UAS operations that do not meet the definition of model aircraft pursuant to §336(c) of the 2012 Act may only be operated with specific authorization from the FAA.

Regulations specifically written for drones/UAS have yet to be promulgated by the FAA. It is anticipated that the FAA will release the rules for public comment this year, however, no specific date has been announced.

At this time, rules and regulations promulgated by the FAA only address safety of persons and property. FAA rules do not address privacy issues or concerns at the federal, State, or local levels. However, we understand that the FAA is also considering privacy issues as they prepare the anticipated drone/UAS regulations. Privacy issues are being discussed in a multi-stakeholder engagement process at the direction of a Presidential Memorandum. The issues include safeguarding privacy, civil rights and civil liberties, and transparency around the usage of commercial and private drones/UAS.

## **2. The effectiveness of the FAA regulations:**

FAA regulations are effective in the area of safety. They are not written to protect the privacy of the general public. However, for the agency's regulations to be effectively enforced in Los Angeles County (County) it will require that city and county law enforcement agencies work closely with the FAA. This would require effective lines of communications to facilitate the exchange of information and evidence such that it could be used in either civil or criminal enforcement actions.

In addition to FAA administrative enforcement remedies, California Public Utility Code (PUC) provides criminal penalties for individuals that operate an aircraft in a careless or reckless manner.

*PUC §21407 states: "It is unlawful for any person to operate an aircraft in the air, or on the ground or water in a careless or reckless manner so as to endanger the life or property of another. In any proceeding charging operation of aircraft in violation of this section, the court in determining whether the operation was careless or reckless shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics."*

Violation of PUC §21407 subjects the violators to the sanctions found in PUC §21019, which states in part: *"Any person violating any of the provisions of this part, other than Section 21407.1, or any of the rules or orders issued under this part, is punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment of not more than six months, or both."*

## **3. Whether fire and law enforcement have adequate training to enforce regulations pertaining to drones/UAS or whether special training is necessary:**

Public safety response by police and fire personnel to calls involving drones/UAS is a new area and rapidly evolving. As drones/UAS are integrated into the national airspace

by the federal government, the County needs to ensure training is also integrated for public safety first responders.

The FAA published a guide for law enforcement response to suspected unauthorized drone/UAS operations. Although well intended, the guidance acknowledges that local police are often in a better position to take immediate enforcement action of suspected unauthorized drone/UAS operations.

### **Sheriff**

The Sheriff's Aero Bureau believes special training will be necessary to safely and appropriately respond to unauthorized drone/UAS operations. The general training areas to consider relate to:

- Coordinated multi-agency response by police, fire and other public safety aircraft operators.
- Coordinated investigations between the FAA and Sheriff to distinguish criminal, civil and administrative enforcement and adjudication.
- Patrol deputy response procedures, investigation, constitutional restraints and requirements, i.e., case law – 4<sup>th</sup> Amendment search and seizure, notifications, and evidence collection.

### **Fire**

Fire has indicated that it will begin exploring and developing the training of Fire personnel as it relates to drone/UAS encounters on emergencies and coordination with law enforcement.

#### **4. Whether Fire and Sheriff have received complaints regarding drones/UAS:**

The Sheriff's Aero Bureau, as of August 2015, has received 12 reports of drone/UAS sightings, reportedly at altitudes above 400 feet and or within the 5 miles radius of an airport. The sources of these reports vary and commonly they are secondhand reports from the FAA-Southern California Tracon (air traffic controllers), police departments and the public.

Fire has not received any complaints regarding drone/UAS activity. The majority of the public's calls regarding drone/UAS activity are routed to the jurisdiction of the local law enforcement agency.

Currently, there is no federal, State or local mechanism for public or private incident reporting of a drone/UAS.

## **5. Whether the County has the authority to restrict drones/UAS:**

Federal statutes and regulations preempt State and local rules that seek to regulate the same field of law. However, since the FAA has not promulgated rules that cover the entirety of the field related to drones/UAS, the County may be able to adopt an ordinance limited to areas where the FAA is not currently regulating (e.g., protection of privacy, property trespass, etc.).

As set forth in Section 1 above, the FAA has a statutory mandate to regulate the navigable airspace of the United States 49 U.S.C. §40103(a). Generally, this means that the FAA has sole jurisdiction on matters affecting airspace navigation. However, current FAA regulations do not specifically regulate drones/UAS. When Congress passed 2012 Act, it specifically tasked the FAA with developing a plan for integrating drones/UAS into the existing regulatory network. It is anticipated that the FAA's drone/UAS specific regulations will be broad-reaching, but focus primarily on safety issues.

Recognizing the gaps in FAA regulations, several states and municipalities have established some form of regulation over drones/UAS. For example, California State law restricts the use of drones/UAS for police surveillance and related matters, California Government Code §6254.31. In addition, the California legislature is currently considering two senate bills (SB) relative to drones/UAS:

- SB 142 would extend liability for wrongful occupation of real property (trespassing) and impose penalties on a person who operates a drone less than 350 feet above ground level within the airspace over private property without the express permission of the property owner.
- SB 167 would make it a misdemeanor to interfere with fire-fighting activities by operation of a drone/UAS at forest fire sites.

Similarly, municipalities throughout the nation have established a range of regulations aimed at preventing harm to the public and protecting privacy, including prohibitions against initiating flight or operation of drones from public facilities, such as parks. Your Board should note that County Code §19.04.830 prohibits the flying of model aircraft or any similar device (which can be interpreted to include drones/UAS) at any County airport. The County could consider amending this section to specifically apply to drones/UAS, and/or create an ordinance that would similarly prohibit the flying of a drone/UAS at or from other unincorporated County land or facilities.

After the FAA releases its final drone/UAS regulations, certain local government regulations may be preempted. In fact, some existing local regulations across the nation may, at this moment, be susceptible to a preemption challenge. By way of illustration, on its website, the FAA claims that any state law or regulation that “prohibits or limits the operation of an aircraft, sets standards for airworthiness, or establishes pilot requirements generally would be preempted.” We anticipate preemption challenges will become more prevalent once the FAA drone/UAS regulations take effect.

However, until the FAA issues regulations specific to drones/UAS, there may be a reasonable argument the states and local governments retain their broad police powers to control the use of drones/UAS within their borders, especially those flying at low altitudes and thus, potentially outside the “navigable airspace of the United States”. Furthermore, local governments may be able to avoid federal and State preemption by creating rules that only seek to address local impacts and by implementing land use regulations that serve to restrict drone/UAS operations rather than regulation of the technology itself.

**6. Whether a County ordinance should be enacted to address any deficiencies in current law:**

It may be advisable for the County to assess the need for a County ordinance after the FAA releases its final drone regulations and the California legislature reaches a final determination on SB 142 and SB 167. It appears that many, if not most, of the issues that may concern the county will be addressed by the combination of federal and State regulations. Alternatively, the County could consider adopting an ordinance that does not regulate airspace navigation and is limited to protection of privacy and private property, or other limited areas where the FAA and the State are not currently regulating.

Should you have any questions regarding the information provided, you or your staff can contact Sheila Williams, Public Safety, at (213) 893-2374.

SAH:JJ:SK  
SW:DC:cc

Attachment

c: Executive Office, Board of Supervisors  
County Counsel  
Sheriff  
Fire